UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: JPMORGAN CHASE & CO. SECURITIES LITIGATION

MEMORANDUM DECISION AND ORDER

12 Civ. 03852 (GBD)

GEORGE B. DANIELS, United States District Judge:

Court-appointed Lead Plaintiffs the Arkansas Teacher Retirement System, the Ohio Public Employees Retirement System, the School Employees Retirement System of Ohio, Sjunde AP-Fonden, the State of Oregon by and through the Oregon State Treasurer on behalf of the Common School Fund and, together with the Oregon Public Employee Retirement Board, on behalf of the Oregon Public Employee Retirement Fund, and the State Teachers Retirement System of Ohio (collectively "Plaintiffs") filed a consolidated amended complaint in this class action, naming as defendants JPMorgan Chase & Co. ("JPMorgan" or the "Company"); as well as individual defendants James Dimon, Michael J. Cavanagh, Douglas L. Braunstein, Ina R. Drew, and Barry L. Zubrow ("Individual Defendants").

Plaintiffs assert two claims: (1) Count One alleges securities fraud against all Defendants under § 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) ("§ 10(b)") and Rule 10b–5 promulgated thereunder, 17 C.F.R. § 240.10b–5 ("Rule 10b–5"); and (2) Count Two alleges control person liability against the Individual Defendants under § 20(a) of the Exchange Act, 15 U.S.C. § 78t(a) ("§ 20(a)"). Plaintiffs bring these claims on behalf of themselves and all other persons or entities that purchased the publicly traded common stock of JPMorgan between February 24, 2010, and May 21, 2012 (the "Class Period"). Plaintiffs allege that Defendants misled investors by making misrepresentations about the Company's Chief Investment Office ("CIO") – the business unit responsible for managing the synthetic credit portfolio ("SCP") that lost at least $6.2 billion in 2012 as a result of the so-called "London Whale" trades executed by traders in its London office.

Defendants filed a Motion to Dismiss the Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Docket No. 80. Defendants' motion to dismiss for failure to state a claim against Individual Defendants Cavanagh, Drew, and Zubrow is GRANTED. Defendants' motion to dismiss for failure to state a claim against Defendants Dimon, Braunstein, and JPMorgan is DENIED.

Background[1]

I. PARTIES

Defendant JPMorgan is a Delaware corporation headquartered in New York, New York. The Company's stock is listed on the New York Stock Exchange, and it is a component of the Dow Jones Industrial Average. JPMorgan is the largest bank in the United States, with $2.32 trillion in assets and $189.73 billion of shareholder equity, as of March 31, 2012. Compl. ¶ 36.

Defendant Dimon is the Chairman of the Board of Directors, President, and CEO of JPMorgan. During the Class Period, Dimon signed the Company's Forms 10-K for 2009, 2010 and 2011, and certified the accuracy of its Forms 10-Q for each quarter. Dimon also participated in the Company's quarterly earnings conference calls during the Class Period on April 14, 2010; July 15, 2010; October 13, 2010; January 14, 2011; April 13, 2011; July 14, 2011; October 13, 2011; January 13, 2012; and April 13, 2012. Id. ¶ 37. He responded to inquiries about the "London Whale" trades and the purpose and function of CIO at this April 13, 2012 conference call.

[1] The following factual allegations are taken from the Complaint (or documents attached to it or incorporated by reference) and are deemed to be true for the purposes of a motion to dismiss. See Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).

Defendant Braunstein was the Executive Vice President and CFO of JPMorgan from June 2010 through the end of the Class Period. During the Class Period, Braunstein signed the Company's Forms 10-K for 2010 and 2011 and certified the accuracy of its Forms 10-Q for each quarter when he was CFO. Braunstein also participated in the Company's quarterly earnings conference calls during the class period on July 15, 2010; October 13, 2010; January 14, 2011; April 13, 2011; July 14, 2011; October 13, 2011; January 13, 2012; and April 13, 2012. He also made comments about CIO at the April 13, 2012 conference call. He was removed from his role as CFO after the end of the Class Period, but remains with the Company. Id. ¶ 39.

Defendant Cavanagh served as the Executive Vice President and Chief Financial Officer ("CFO") of JPMorgan from before the beginning of the Class Period until June 2010, when he became CEO of the Company's Treasury and Securities Services Business, a position he retained throughout the end of the Class Period. During the Class Period, Cavanagh signed the Company's 2009 Form 10-K and certified the accuracy of its Forms 10-Q for each quarter when he was CFO. Cavanagh also participated in the Company's quarterly earnings conference calls during the class period on April 14, 2010 and July 15, 2010. Since July 2012, Cavanagh has served as Co-Chief Executive Officer of the Corporate & Investment Bank at JPMorgan. Id. ¶ 38.

Defendant Drew was the Chief Investment Officer and a member of the Operating Committee of JPMorgan during the Class Period. As part of her role, Drew oversaw and managed the Company's CIO, including its investments and trading operations, during the Class Period. Drew was terminated from JPMorgan on May 13, 2012. Id. ¶ 40.

Defendant Zubrow served as JPMorgan's Chief Risk Officer from November 2007 until January 2012, and subsequently served as Head of Corporate and Regulatory Affairs. Zubrow served on the Company's Operating Committee from 2007 until at least October 2012, and reported directly to Dimon from the time Zubrow joined the Company in 2007 until at least July 2012. Zubrow announced his departure from JPMorgan in October 2012. Id. ¶ 40.

II. FACTUAL ALLEGATIONS

This action arises from JPMorgan's representations about the risk-management role of CIO and the trading losses incurred by CIO's SCP in 2012. Id. ¶ 3. CIO is a business unit within JPMorgan that is primarily responsible for managing the risks arising from imbalances between JPMorgan's loans (assets) and deposits (liabilities). Id. ¶ 51. During the financial crisis, JPMorgan's excess deposits increased significantly due to the bank's perceived financial stability. By the beginning of 2012, CIO's investment-securities portfolio was a significant component of JPMorgan's overall assets and held more than $350 billion of assets, up from $76 billion at the end of 2007. Id. ¶¶ 51-53. Plaintiffs allege that JPMorgan's representations concerning the risk management activities of CIO were false and that by the start of the Class Period, Defendant Dimon had "secretly transformed the CIO from a risk management unit into a proprietary trading desk whose principal purpose was to engage in speculative, high-risk bets designed to generate profits." Id. ¶ 5.

Plaintiffs allege that in order to facilitate "the aggressive trading required to meet Dimon's profit objectives," CIO removed some of the risk limits on the SCP. Id. ¶ 6. In particular, the Company removed the "stop loss limits" that previously required CIO traders to exit positions when losses reached $20 million, and allegedly did not impose any risk limits on the SCP – despite public assurances to the contrary. Plaintiffs allege that Defendants took additional steps to keep CIO's aggressive trading a secret, such as excluding executives from CIO's risk meetings and terminating executives who pushed for risk controls. Id.

Plaintiffs' primary allegations concern the SCP, the London-based portfolio that was managed by CIO and incurred significant losses in 2012. The "primary purpose" of the SCP was "to provide a partial offset to losses [JPMorgan] would suffer elsewhere in CIO, and the Company in a stressed credit environment." 7/13/12 earnings call tr. The SCP was a multi-billion dollar portfolio managed by a London-based trader named Bruno Iksil. The SCP eventually became CIO's "largest position" during the Class Period, and constituted such a large part of the market for synthetic-credit derivatives that, by the end of 2009, Iksil's positions were illiquid. Id. ¶ 8. By the start of the Class Period in early 2010, the illiquidity risk presented by the SCP was so severe that a senior JPMorgan executive allegedly prepared a report documenting the need for a $2 to $4 billion reserve to guard against losses in CIO. JPMorgan did not establish such a reserve for CIO, and Plaintiffs allege that, as a result, the Company's net income was overstated by billions of dollars throughout the Class Period. Id. ¶ 9. The SCP continued to grow during the Class Period and so did the risk for the portfolio. The Company's model for measuring risk, known as "value at risk" or "VaR," which measured how much money a trade could lose on a given day, showed that at one point during the Class Period the SCP could lose as much money in a single day as the hundreds of positions in the Company's Investment Bank. Id. ¶ 10.

Plaintiffs allege that by no later than mid-2011, JPMorgan knew that the SCP portfolio had grown to a "perilous size" such that the Company's publicly reported VaR would spike if accurately calculated and reported. Plaintiffs allege that in order to conceal the true purpose of and risk associated with CIO, JPMorgan developed a new VaR model that was designed to artificially lower CIO's VaR. Plaintiffs allege that Defendant Dimon personally approved the development of this new model, and its implementation in January 2012. Plaintiffs further allege that using the new model, JPMorgan reported in the first quarter of 2012 that CIO's VaR was virtually unchanged from the prior quarter when, in truth, the original VaR model showed that the risk of loss had doubled. Defendants did not disclose that CIO's VaR model had been changed in either JPMorgan's 2011 annual report or when announcing results for the first quarter of 2012, after the changes were made. Id. ¶ 11.

In the spring of 2012, the media first reported that CIO had amassed a portfolio of credit derivatives so large that Bruno Iksil – a London-based trader who helped manage the portfolio – had been nicknamed the "London Whale" by credit derivatives traders. Plaintiffs allege that although losses in the SCP had already reached $1.2 billion, and internal JPMorgan reports were warning that the SCP could lose as much as $9 billion, Defendants mounted a public relations campaign to falsely assure investors and downplay concerns about proprietary trading in CIO. Defendant Dimon famously called the news reports about the portfolio a "tempest in a teapot" during an April 13, 2012 earnings call. Id. ¶ 13.

Allegations of Securities Fraud

A complaint must have "enough facts to state a claim to relief that is plausible on its face" to survive a motion to dismiss for failure to state a claim. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 557). Plausibility requires "more than labels and conclusions." Id. at 555. Legal conclusions must be supported by well-pleaded factual allegations. See Iqbal, 556 U.S. at 679. "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Id.

Although this motion is addressed to the face of the pleadings, the Court may consider also the full text of "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). Defendants have submitted many exhibits in support of their motion, including the text of SEC filings and press releases referred to in the Complaint. The Court considers those documents that the Complaint effectively incorporates by reference or are amenable to judicial notice.

As this is a securities fraud case, the complaint must satisfy the heightened pleading requirements of Rule 9(b) and the PSLRA. Under Rule 9(b), allegations of fraud must be "state[d] with particularity." Fed. R. Civ. P. 9(b). To satisfy this requirement, Plaintiffs "must: (1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." Novak, 216 F.3d at 306. Where an allegation regarding a misstatement or omission is made on information and belief, "the complaint shall state with particularity all facts on which that belief is formed."[2] 15 U.S.C. § 78u–4(b)(1). Moreover, the PSLRA requires that "securities fraud complaints 'specify' each misleading statement; that they set forth the facts 'on which [a] belief' that a statement is misleading was 'formed'; and that they 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" Dura Pharms., Inc. v. Broudo, 544 U.S. 336, 345 (2005) (quoting 15 U.S.C. § 78u–4(b)(1), (2)). The required state of mind is "an intent to deceive, manipulate, or defraud." Ganino v. Citizens Utils. Co., 228 F.3d 154, 168 (2d Cir. 2000) (quoting Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n. 12 (1976) (internal quotation marks omitted)).

I. Overview of Applicable Law

Plaintiffs' principal securities fraud claims are brought pursuant to section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b). This provision makes it unlawful to "use or employ, in connection with the purchase or sale of any security ... any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may proscribe." Id. The SEC rule implementing the statute, Rule 10b–5, prohibits "mak[ing] any untrue statement of a material fact or [omitting] to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading." 17 C.F.R. § 240.10b–5(b) (2008). To state a claim based on a misrepresentation or omission in violation of Rule 10b–5, Plaintiffs must allege that a defendant "(1) made misstatements or omissions of material fact; (2) with scienter; (3) in connection with the purchase or sale of securities; (4) upon which plaintiffs relied; and (5) that

[2] The requirement of stating "all facts" is not applied literally. See Novak v. Kasaks, 216 F.3d 300, 313–14 (2d Cir. 2000). In this case, many of Plaintiffs' allegations (excluding those concerning their own activities) are made on information and belief. See Compl. ¶ 2.

plaintiffs' reliance was the proximate cause of their injury." Lentell v. Merrill Lynch & Co., 396 F.3d 161, 172 (2d Cir. 2005) (quoting In re IBM Corp. Sec. Litig., 163 F.3d 102, 106 (2d Cir.1998) (internal quotation marks omitted)), cert. denied, 546 U.S. 935 (2005).

A. Materiality

In order to determine whether a misleading statement is material, courts must engage in a fact-specific inquiry and examine "all relevant circumstances." ECA, 553 F. 3d at 197. "The materiality of a misstatement depends on whether 'there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to [act].'" Id. (quoting Basic Inc. v. Levinson, 485 U.S. 224, 231 (1988)). "In other words, in order for the misstatement to be material, 'there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.'" Id. (quoting Basic Inc., 485 U.S. at 231–32). "Because materiality is a mixed question of law and fact, in the context of a Fed. R. Civ. P. 12(b)(6) motion, a complaint may not properly be dismissed ... on the ground that the alleged misstatements or omissions are not material unless they are so obviously unimportant to a reasonable investor that reasonable minds could not differ on the question of their importance." Id. (internal quotation marks omitted). However, courts are not to credit mere business "puffery," which has been defined as "statements [that] are too general to cause a reasonable investor to rely upon them." Id. at 206. For instance, generalizations about a company's business practices and integrity may be "so general that a reasonable investor would not depend on [those statements]." Id.

B. Scienter

To qualify as a strong inference of scienter, evidence of fraudulent intent must be "cogent and at least as compelling as any opposing inference of nonfraudulent intent." Tellabs, Inc., 551 U.S. at 314. Courts must "consider the complaint in its entirety," inquiring "whether all of the facts alleged, taken collectively, give rise to a strong inference of scienter, not whether any individual allegation, scrutinized in isolation, meets that standard." Id. at 323. This may be satisfied by showing either (1) both a motive and opportunity to commit fraud, or (2) by strong circumstantial evidence of conscious misbehavior or recklessness. See ATSI Comms. Inc. v. Shaar Fund, Ltd., 493 F.3d 87, 99 (2d Cir. 2007).

In order to raise a strong inference of scienter through "motive and opportunity" to defraud, Plaintiffs must allege that JPMorgan or its officers "benefitted in some concrete and personal way from the purported fraud." Novak, 216 F.3d at 307–08. Motives that are common to most corporate officers, such as the desire for the corporation to appear profitable and the desire to keep stock prices high to increase officer compensation, do not constitute "motive" for purposes of this inquiry. Id. at 307; Kalnit v. Eichler, 264 F.3d 131, 139 (2d Cir. 2001). Rather, the "motive" showing is generally met when corporate insiders allegedly make a misrepresentation in order to sell their own shares at a profit. Novak, 216 F.3d at 308.

In this case the Complaint does not allege scienter through motive and opportunity, but attempts to plead facts showing strong circumstantial evidence of conscious misbehavior or recklessness. If Plaintiffs cannot make the "motive" showing, then they can raise a strong inference of scienter under the "strong circumstantial evidence" prong, "though the strength of the circumstantial allegations must be correspondingly greater" if there is no motive. Kalnit, 264 F.3d at 142 (quoting Beck v. Mfrs. Hanover Trust Co., 820 F.2d 46, 50 (2d Cir. 1987), overruled on other grounds by United States v. Indelicato, 865 F.2d 1370 (2d Cir. 1989) (en banc)). At least four circumstances may give rise to a strong inference of the requisite scienter: where the complaint sufficiently alleges that the defendants (1) "benefitted in a concrete and personal way from the purported fraud"; (2) "engaged in deliberately illegal behavior"; (3) "knew facts or had access to information suggesting that their public statements were not accurate"; or (4) "failed to check information they had a duty to monitor." Novak, 216 F.3d at 311; see also Teamsters Local, 531 F.3d at 194.

II. Plaintiffs Adequately State A Claim Against Defendants Dimon, Braunstein And JPMorgan

Plaintiffs have made numerous allegations against all of the Defendants that are insufficient to plead a material misrepresentation or scienter.[3] However, as noted infra, several of Plaintiffs' allegations are sufficient to state a cause of action against Defendants Dimon, Braunstein, and JPMorgan.

A. JPMorgan's First Quarter 2012 VaR

Plaintiffs allege that the Defendants materially understated the Company's VaR in an April 13, 2012 earnings release. See Compl. ¶ 314. JPMorgan's representations regarding the Company's VaR are sufficiently alleged to be misleading. An investor viewing these earnings results could have reasonably concluded that, since the 2011 fourth quarter VaR and the 2012 first quarter VaR were so similar, at $67 million and $69 million respectively, that the risk had not changed for CIO or its underlying portfolios. In fact, the risk had changed, and the SCP book was radically different. The 2012 portfolio was three times larger, with $157 billion in credit derivation notional value compared to $51 billion in 2011. Id. ¶ 363. The fact that CIO had replaced its VaR model with a new version that artificially lowered its VaR total overnight by 50% was nowhere mentioned in the 8-K filing. By

[3] Plaintiffs allege that (1) general statements in JPMorgan's 2010 and 2011 SEC filings describing CIO's overall purpose and activities as a risk-management unit were false and misleading; (2) general statements in JPMorgan's 2010 and 2011 SEC filings concerning the Company's risk management practice were false and misleading; and (3) JPMorgan's reported earnings throughout 2010, 2011 and 2012 and JPMorgan's certifications that its earnings were prepared in accordance with GAAP were false and misleading. Plaintiffs also allege that the trading in the SCP in the first quarter of 2012 and the alleged mismarking of certain SCP positions rendered the following statements in early 2012 false: (i) the same or similar general statements describing CIO's overall purposes and activities and JPMorgan's firm-wide risk management practices in (a) JPMorgan's Comment Letter on the Notice of Proposed Rulemaking Implementing Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (dated February 13, 2012) (the "Dodd-Frank Comment Letter") (id. ¶ 276), (b) JPMorgan's 2011 Form 10-K (dated February 29, 2012) (id. ¶¶ 279, 286- 87), (c) Dimon's annual letter to shareholders (dated March 30, 2012) (id. ¶ 294), (d) JPMorgan's 2012 Proxy Statement (dated April 4, 2012) (id. ¶¶ 292-93), and (e) the April 13, 2012 earnings release (id. ¶ 311); (ii) a statement by Dimon during a February 13, 2012 interview by Fox Business News (id. ¶ 277); (iii) Dimon's and Braunstein's certifications of the effectiveness of JPMorgan's internal controls in JPMorgan's 2011 Form 10-K and its reported earnings in its April 13, 2012 earnings release (id. ¶¶ 289-91, 302); (iv) JPMorgan's descriptions of VaR in its fourth quarter of 2011 Form 8-K and its 2011 Form 10-K (id. ¶¶ 249, 281, 283-84, 314); and (v) statements made by a Company spokesperson in April 2012 following the initial "London Whale" press reports. Plaintiffs have failed to allege that those statements were materially false and misleading when made and none of those allegations – analyzed separately or taken together – raises the requisite strong inference of scienter. See Tellabs, 551 U.S. at 314. Accordingly, Plaintiffs fail to state a claim against any of the Defendants on the basis of those allegations.

omitting any mention of the model change and its significant impact on the CIO's VaR results, the information about CIO VaR that was provided in the April 13 form 8-K provided a materially misleading picture of the risks facing CIO.

Plaintiffs have alleged specific facts to support a strong inference of scienter with respect to JPMorgan's VaR. Plaintiffs' allegations indicate that both Braunstein and Dimon had been informed of the VaR change at the time it was made in January 2012. Each had received multiple email communications about the expected reduction to be provided by CIO's new VaR model. Id. ¶¶ 136, 161, 165-68. They had received the emails in the context of CIO's four-day breach of the bankwide VaR limit in January 2012 and were assured that the new CIO VaR model would produce a lower VaR result and end the breach. Id. ¶¶ 135-37, 165. Under JPMorgan policy, CEO Dimon had to personally respond to breach of the bankwide VaR limit, and, in this case, approve a temporary VaR limit increase to end CIO's breach. When the request was made of him to temporarily increase the VaR limit, he responded, "I approve" in an email. The rationale provided to him for raising the limit and ending the breach was that CIO was going to soon have a new model that would reduce its VaR by 44%. Id. ¶ 327. Plaintiffs' allegations support the compelling inference that Defendants Dimon and Braunstein "knew facts or had access to information suggesting that their public statements were not accurate." Novak, 216 F. 3d at 311. Plaintiffs have adequately pled scienter with respect to these allegations against Defendants Dimon, Braunstein, and JPMorgan.

B. Statements Made During the April 13, 2012 Earnings Call

Plaintiffs have also alleged that Defendants Dimon and Braunstein made material misrepresentations concerning the "London Whale" trades and the purpose and function of CIO during an April 13, 2012 first quarter earnings conference call. Compl. ¶¶ 303, 305, 307, 309, 312. During the conference call, Defendant Dimon made the following statement about the SCP in response to a reporter's question about recent news reports:

> It's a complete tempest in a teapot. Every bank has a major portfolio. In those portfolios, you make investments that you think are wise, that offset your exposures. Obviously, it's a big portfolio. We're a large company and we try to run it. It's sophisticated, well, obviously, a complex thing. But at the end of the day, that's our job, is to invest that portfolio wisely and intelligently to – over a long period of time to earn income and to offset other exposures we have.

Id. at ¶ 201. During that same call, Defendant Braunstein made comments about CIO and its excess deposits. He stated:

> "[W]e also need to manage the stress loss associated with that portfolio, and so we have put on positions to manage for a significant stress event in Credit. We have had that position on for many years and the activities that have been reported in the paper are basically part of managing that stress loss position, which we moderate and change over time depending upon our views as to what the risks are for stress loss from credit."
>
> "All of those decisions are made on a very long-term basis. They are done to keep the Company effectively balanced from a risk standpoint. We are very comfortable with our positions as they are held today."
>
> "And I would add that all of those positions are fully transparent to the regulators. They review them, have access to them at any point in time, get the information on those positions on a regular and recurring basis as part of our normalized reporting. All of those positions are put on pursuant to the risk management at the firm-wide level. The last comment I would make is that ... we believe all of this is consistent with what we believe the ultimate outcome will be related to Volcker."

Id. ¶ 201.

Plaintiffs further allege that during the April 13 investor conference call Defendant Braunstein made additional materially false and misleading statements. Plaintiffs allege Defendant Braunstein continued to falsely insist that CIO was not a source of risk but was rather merely engaged in hedging activities and only "invest[ed] … in high grade, low-risk securities." Compl. ¶ 305. During the call, Braunstein directly responded to reports about the CIO's investments in synthetic-credit derivatives by claiming that those positions were "hedges" to "keep the Company effectively balanced from a risk standpoint," and that JPMorgan was "very comfortable" with the positions.[4] Compl. ¶ 201.

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[4] Specifically, Braunstein stated: (1) CIO "invests...in high grade, low-risk securities;" (2) "We invest those in order to hedge the interest rate risk of the Firm as a function of that liability and asset mismatch. We hedge basic risk, we hedge convexity risk, foreign exchange risk is managed through CIO, and MSR risk. We also do generate NII [net interest income], which we do with that portfolio;" and (3) "The CIO balances our risks" and "hedge[s] against downside risk,

The Complaint adequately alleges that these statements were materially false and misleading when made. In order for a misstatement to be material, "there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available." Basic Inc, 485 U.S. at 231-32. It is only proper to dismiss a complaint on the ground that the alleged misstatements or omissions are not material if "they are so obviously unimportant to a reasonably investor that reasonable minds could not differ on the question of their importance." Id. Here, the public statements concerning CIO and the SCP were material. In discussing the SCP on the earnings call, Defendants Dimon and Braunstein allegedly omitted material facts that would have been viewed by a reasonable investor as having significantly altered the "total mix" of information available. Id. The statements were material as they were made immediately after the financial news media revealed that CIO had amassed a huge position in exotic derivative instruments, and Defendants were attempting to reassure investors that those trades were under control. Compl. ¶¶ 188-90, 296-313. Had the Defendants disclosed all of the material facts that they were allegedly in possession of, it would have significantly altered the information available to investors.

Plaintiffs have also sufficiently alleged a strong inference of scienter with respect to these statements. Plaintiffs allege that given the information that bank executives possessed in advance of the bank's public communications in April, the representations made by Defendants JPMorgan, Dimon and Braunstein were incomplete, contained numerous inaccuracies, and misinformed investors, regulators, and the public about the SCP. The facts alleged by Plaintiffs indicate that, from the beginning of JPMorgan's public discussion of the SCP in April 2012, those defendants planned to describe the portfolio as a risk-reducing hedge that was transparent to the bank's regulators, even though neither characterization was accurate. Plaintiffs have made numerous factual allegations to

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that's the nature of protecting the balance sheet." Compl. ¶¶ 305, 312. In addition, the Complaint alleges an additional false statement made by Braunstein and Dimon: "When we put a dollar to work we want to do so prudently and invest it in safe, smart and good-returning assets, and that is the job of CIO . . . . We are very conservative." Id. ¶ 312.

support the compelling inference that these Defendants "knew facts or had access to information suggesting that their public statements were not accurate." Novak, 216 F. 3d at 311.

In the first instance, Plaintiffs allege that these Defendants were in possession of information before the April 13 call that indicated that losses were substantial and growing. Specifically, Dimon and others allegedly knew that the losses associated with the London Whale trades had already reached $1.2 billion, over $400 million of which occurred on a single trading day, and Dimon and others had been told that the losses could reach as high as $9 billion. Compl. ¶¶ 193-95, 304. In addition, compared to the prior quarter, the SCP had tripled in size from about $51 billion to $157 billion and contained many new credit derivatives. Id. ¶ 363. Furthermore, Defendants Dimon and Braunstein were allegedly told that the portfolio's largest position would take 10-15 days of selling at 100% trading volume to exit. Thus, these two executives knew that exiting some of the portfolio's positions could take weeks or months. Id. ¶ 111. Further, Defendants Dimon and Braunstein were also allegedly informed that the SCP had switched its overall positions from short to long, a direction inconsistent with its purported hedging purpose. Id. ¶ 327. Plaintiffs also allege additional facts including that Defendants Braunstein and Dimon knew that the SCP's VaR exceeded the VaR of the entire Investment Bank; and as of March 29, 2012, the CIO breached risk limits and advisories more than 330 times in three months. Id. ¶¶ 327(b-f), 123, 126, 162, 187. In short, Plaintiffs have adequately alleged that Defendants Dimon and Braunstein knew facts or had access to information suggesting that their public statements were not accurate.[5]

III. Plaintiffs Fail To State A Claim Against Defendants Cavanagh, Drew And Zubrow

With respect to Plaintiffs' allegation that the Defendants materially understated the Company's VaR in the April 12, 2012 earnings release, Plaintiffs have failed to make specific allegations

[5] Because the Complaint "properly alleges scienter against [individual Defendants CEO Dimon and CFO Braunstein], it necessarily alleges scienter against [JPMorgan]." City of Roseville, 814 F. Supp. 2d at 420; see also Teamsters Local, 531 F.3d at 195 ("the most straightforward way to raise such an inference for a corporate defendant will be to plead it for an individual defendant.").

supporting a strong inference of scienter as to Defendants Cavanagh, Drew, and Zubrow. See Compl. at ¶¶ 335-359. As noted supra, Plaintiffs have made specific factual allegations that Dimon and Braunstein were informed of the VaR change at the time it was made in 2012, received multiple email communications about the change and the purpose of the change, and Dimon affirmatively approved the change. However, Plaintiffs have failed to make similar allegations with respect to Defendants Cavanagh, Drew, and Zubrow. See, e.g.. Compl. at ¶348. Plaintiffs do not allege that Defendants Cavanagh, Drew, and Zubrow received information about the new CIO VaR model that would create a strong inference that they knew, or were reckless in not knowing, that the reported CIO VaR calculations for the first quarter of 2012 were inaccurate. Accordingly, Plaintiffs have failed to allege sufficient facts to support a strong inference of scienter with respect to these allegations against Defendants Cavanagh, Drew, and Zubrow.

Plaintiffs also argue that Defendants Cavanagh, Drew and Zubrow should be held liable for the statements made by Dimon and Braunstein during the April 13, 2012 first quarter earnings conference call. See supra; Compl. ¶ 407. Plaintiffs' allegation that Defendants Cavanagh, Drew and Zubrow provided information to Defendants Dimon and Braunstein before the April 13 earnings call is not enough to establish that Cavanagh, Drew and Zubrow made the challenged statements. See Janus, 131 S. Ct. at 2303-04 (rejecting interpretation of word "make" that would subject person who participates in drafting false statement made by another to liability pursuant to Section 10(b)). Furthermore, Plaintiffs have failed to allege that Defendants Cavanagh, Drew and Zubrow are liable as control persons under Section 20(a) for the alleged primary violations of Section 10(b). To establish liability under Section 20(a), Plaintiffs must allege facts that demonstrate that Defendants Cavanagh, Drew and Zubrow had "actual control" over a primary violator. In re Alstom SA, 406 F. Supp. 2d 433, 486 (S.D.N.Y. 2005) (internal quotation marks omitted). Plaintiffs have alleged no facts supporting this inference with respect to the allegations in the Complaint.

Conclusion

Defendants' motion to dismiss for failure to state a claim against Defendants Cavanagh, Drew, and Zubrow is GRANTED. Defendants Cavanagh, Drew, and Zubrow are hereby dismissed from this case.

Defendants' motion to dismiss for failure to state a claim against Defendants Dimon, Braunstein, and JPMorgan is DENIED. The Clerk of Court is directed to close motion #80 on docket 12-cv-03852.

Dated: March 31, 2014
New York, New York

SO ORDERED:

George B. Daniels

GEORGE B. DANIELS
United States District Judge